

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v.

10-CR-125

GREGORY MAGNESS,

Defendant.

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**GOVERNMENT'S AFFIDAVIT IN RESPONSE TO  
DEFENDANT'S REQUEST FOR SECOND APPOINTED COUNSEL  
AND ADJOURNMENT OF THE JULY 27, 2015 SENTENCE DATE**

STATE OF NEW YORK     )  
COUNTY OF ERIE         ) SS:  
CITY OF BUFFALO         )

MICHAEL DIGIACOMO, being duly sworn, deposes and states:

1. I am an Assistant United States Attorney representing the United States of America in the above-captioned proceeding. As such I am fully familiar with the pleadings and proceedings to date.

2. This Affidavit is submitted in response to the motions filed by defendant Gregory Magness (Dkt. #366 and Dkt. #367) that the Court assign additional counsel and adjourn the July 27, 2015 sentencing date.

3. As for the assignment of a second counsel 13 days prior to sentencing, the government leaves that to the discretion of the Court.

4. However, as to the request to adjourn the July 27, 2015 sentencing date, the government is opposed to such a request unless the July 27, 2015 sentence date of co-defendant Justin Magness is also adjourned and the adjournment is brief.

5. The reason the government requires the sentencing date of Justin Magness be adjourned is based upon the fact that the Misdemeanor plea offered to defendant Justin Magness was conditioned on defendant Gregory Magness entering into his plea agreement. (See paragraph 18 of the plea agreement of Gregory Magness Dkt. #315).

6. Since the plea agreements were conditioned upon one another and the government is uncertain as to why defendant Gregory Magness seeks the appointment of a second counsel 13 days prior to sentencing, the government respectfully requests that the sentencing of both defendants must occur on the same date.

7. Finally, the government requests that if the Court grants any continuance, that the continuance be very brief as the defendants pleaded guilty before the Court back on January 12, 2015.

WHEREFFORE, the government respectfully requests the Court rule on the motion of defendant Gregory Magness to appoint a second counsel and further adjourn the July 27, 2015 sentencing date of Justin Magness if the Court grants the adjournment request of defendant Gregory Magness.

S/MICHAEL DIGIACOMO  
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United States Attorney's Office  
Western District of New York  
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Sworn to before me this 15<sup>th</sup> day of  
July, 2015.

S/KATHLEEN M. RIEMAN  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires 9-23-17